

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE V.GIRI**

**MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929**

**WP(C).No. 25676 of 2007(F)**  
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**PETITIONERS:**  
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1. **A.SAJEEV KUMAR,  
(SECRETARY, LAND ACQUIRED PEOPLES ASSOCIATION),  
L.A.P.A., MANGALASSERIL MIDAPPALLY,  
MUKUNTHAPURAM P.O., CHAVARA.**
2. **S.RESMY,  
SREE BHAVANAM,  
THOTTINU VADAKKU, CHAVARA.**
3. **K.S.GOPAKUMAR,  
KOCHALAM VEEDU, VADAKKUMTHALA,  
KARUNAGAPPALLY P.O.**
4. **MEENAKSHY SUNDARAM,  
PARICHA VEEDU, PUTHENCHANTHA,  
CHAVARA.**
5. **K.BALAKRISHNAN,  
KOCHUTHARA VADAKKATHIL,  
KOVOOR, ARINALLOOR,  
MYNAGAPPALLY P.O.**
6. **N.SANTHAN, N.K.VIHAR,  
CHERUSSERI BHAGOM, CHAVARA.**
7. **G.PRADEEP,  
THOTTAKIZHAKKATHIL,  
PANMANA, CHAVARA P.O.**

- 8. R.RESMY, SREE VIHAR,  
MIDAPPALLY, EDAPPALLICOTTA P.O.**
- 9. S.SUMESH, PULIVILA VEEDU,  
KUREEPUZHA AVANAD P.O., KOLLAM.**
- 10. M.RASALUDHEEN,  
MEENATHERIL VEEDU, MIDAPPALLY,  
EDAPPALLICOTTA P.O.**
- 11. VENU, PRAVEEN BHAVAN,  
KALARI, CHAVARA P.O.**
- 12. B.JAYACHANDRAN, BRAHMA BHAVANAM,  
VADUTHALA, PANMANA,  
PUTHENCHANTHA P.O.**
- 13. JITHIN.J,  
KOMAYIL VEEDU, K.S.PURAM,  
KOTTAPPURAM, CLAPPANA P.O.**
- 14. MOHAMMED RAFEEL, KOITHARA VEEDU,  
MAVELI, PANMANA, EDAPPALLICOTTA P.O.**
- 15. P.T.JAYAPRAKASH,  
REMALAYAM, KOLLAM, CHAVARA P.O.**
- 16. M.SUNDARAM,  
PUTHENPURAYIL, AKKAL,  
EDAPPALLICOTTA P.O.**
- 17. S.GOPAKUMAR,  
UDAYATHUM VEEDU, VADUTHALA,  
PANMANA, PUTHENCHANTHA P.O.**
- 18. K.SHAJAHAN,  
VADAKKINETHU VEEDU,  
KALARI, CHAVARA P.O.**
- 19. SURESH.P,  
ELEVANTHARA KIZHAKKATHIL,  
VADAKKUMTHALA MEKKU,  
PANMANA, KARUNAGAPPALLY.**

**20. BINDU JAYADEVAN,  
VARANPUKALI VEEDU,  
PADA-SOUTH, KARUNAGAPPALLY P.O.**

**BY ADVS. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)  
SRI.TONY GEORGE KANNANTHANAM**

**RESPONDENTS:**

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- 1. STATE OF KERALA, REPRESENTED BY  
SECRETARY, INDUSTRIES DEPARTMENT,  
SECRETARIAT, TRIVANDRUM.**
- 2. KERALA MINERALS & METALS LTD.,  
REPRESENTED BY MANAGING DIRECTOR,  
SANKARAMANGALAM, CHAVARA, KOLLAM.**

**BY ADV. M/S.B.S.KRISHNAN ASSOCIATES, SC. KMML  
SRI.K.ANAND (A.201)  
SMT.LATHA KRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ALONG WITH WPC NO. 26763 OF 2007 WPC NO.  
25892 OF 2007 ON 08/10/2007, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:**

**V.GIRI, J.**

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**W.P.(C).No.25676, 25892  
& 26763 of 2007**  
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**Dated this the 8<sup>th</sup> day of October, 2007.**

## **JUDGMENT**

Common issues arise for consideration in these writ petitions. Therefore, they have been heard together and are being disposed of by this common judgment.

2. The petitioners claim to be skilled workers having S.S.L.C and certificate in the trade of fitter. W.P.(C) No.25676/07 is taken as the leading case.

3. Petitioners are the Secretary and members of a Registered Association. They contend that on the setting up of the second respondent's Fitment Unit at Chavara, some of the petitioners were evicted from the residential area. They referred to Exts.P1 and P2 to show that the evictees, however, will have a preferential claim in the second respondent company. In Ext.P2 communication issued by the Government, it is stated as follows:

"With reference to the above, I am directed to inform you that the ban imposed on the selection of candidates to various categories of posts in the company vide telex message quoted is hereby lifted. I am also to inform you that selection of candidates among the preferential categories should be on the priority order given below:

1. Evictees
2. Persons whose land as been taken

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3. Persons belonging to surrounding panchayats who have been working at the project site.

In future while recruiting candidates to the company, the priority order as above may be observed.”

4. The claim made by an evictee on an earlier occasion led to O.P.No.31977/00 and 278/01 which was disposed of under Ext.P6 judgment. This court found that Ext.P2 communication is binding on the company. It was observed as follows:

“Admittedly, as evident from the counter affidavit, the second respondent is bound by the directions issued by the first respondent in the matter of recruitment.”

5. The contention taken on behalf of the company that they need prefer an evictee, if other things are equal, was considered and rejected. Ext.P6 judgment was affirmed in Ext.P7 judgment by the Division Bench as well.

6. None of the petitioners have been appointed to any of the categories so far. According to them, steps are being taken by the second respondent company to overlook their preferential claim for appointments and to make appointment from outside. Hence, this writ petition, in which the petitioners specifically say that the only relief sought for in the writ petition is a direction to the respondents not to make any appointments including that of a casual worker in the

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second respondent company, overlooking the preferential claim of the petitioners.

7. A counter affidavit has been filed by the 2<sup>nd</sup> respondent. The company contends that there is no cause of action for the petitioners.

8. A reply affidavit has been filed by the petitioners. In view of the stand taken in the counter affidavit that the company does not propose to make any appointments, I am of the view that the major portion of the anxiety expressed by the petitioners does not arise at this stage. But, it is made clear that the right of the petitioners and similarly situated persons, as an evictee or coming under any other preferential category, noted in Ext.P2 will remain in tact, and the second respondent company cannot overlook the claim of such persons in the preferential categories, as noted in Ext.P2 in the matter of appointment of even casual employees.

9. Learned counsel for the petitioners refers to Ext.P4 in W.P.(C)No.25892/07 and contends that the company has invited applications from the open market, for operator trainees in different sections. It is contended that

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the 2<sup>nd</sup> respondent seems to be adopting a ruse of employing persons, under the guise of engaging and calling them for training and thereby trying to overlook persons like the petitioners, whose inclusion in the preferential category and consequential right for appointment in the company as a suitable workman, has been upheld in Exts.P4, P6, and P7 judgments marked in W.P.(C)No.25676/07. Learned counsel for the company submits that what has been notified in Ext.P4 produced in W.P.(C)NO.25892/07 is only that persons, will be given training and such training will not confer any right whatsoever for appointment in the company. He reiterates that it is made clear in the notification. He undertakes on behalf of the company that it will be reiterated in any proceedings that may be issued in relation to any such persons who are called for training. It is further submitted that a trainee will not be entitled to absorption merely by reason of such training and in the matter of absorption of any person, who is called for training and who undergoes any training under Ext.P4 or any such notification the right of persons included in the preferential category in Ext.P2 will be adhered to and it is only thereafter that persons from the

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open market will be appointed either against a permanent vacancy or on a casual basis.

10. Learned counsel for the petitioners Mr.Tony George Kannanthanam submitted that the petitioners, who are included in the preferential categories, have also a right to be called for training. In my opinion, unless training is part of the appointment itself, such a right cannot really and necessarily be found in favour of the petitioners. But, nevertheless, if the company decides to treat training as a prelude to absorption/appointment, then they can call persons like the petitioners also for training as such, in which case, the petitioners cannot object to any such call made by the company.

Subject to these observations, the writ petitions are disposed of.

Sd/-  
**(V.GIRI)**  
**JUDGE**

sk/

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P.S. To Judge